

City of Detroit


CITY COUNCIL

DAVID D. WHITAKER
Director
(313) 224-4946

DIVISION OF RESEARCH & ANALYSIS
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 216
Detroit, Michigan 48226
(313) 224-4946
FAX: (313) 224-0368

PEGGY ROBINSON
Deputy Director
(313) 224-4946

TO: The Honorable Kenneth V. Cockrel, Jr.

FROM: David Whitaker 
Research and Analysis Division Staff

DATE: April 21, 2010

RE: **QUESTION WITH RESPECT TO NEED TO ABSTAIN FROM VOTING TO AUTHORIZE AGREEMENT BETWEEN THE CITY OF DETROIT, THE DETROIT MEDICAL CENTER AND VANGUARD HEALTH SYSTEMS, INC. AND AUTHORIZING AN ASSOCIATED DESIGNATION OF A WAYNE COUNTY RENAISSANCE ZONE**

The Research and Analysis Division (RAD) was asked for an opinion with respect to whether it is appropriate for a member of the Detroit City Council, specifically Council Member Kenneth V. Cockrel, Jr., to participate in a vote to authorize the agreement between the City of Detroit, the Detroit Medical Center (DMC) and Vanguard Health Systems, Inc. (Vanguard), as well as a vote authorizing an associated designation of a Wayne County Renaissance Zone on behalf of the DMC/Vanguard Project, in accordance with Michigan Renaissance Zone Act P.A. Act 376 of 1996, where the Council Member's spouse is an employee of the DMC.

Legal Authority

The 1997 Detroit City Charter requires that all council members vote on all questions unless he or she has a pecuniary interest in the matter. Specifically, section 4-108 provides as follows:

Except as otherwise provided by this Charter, no action of the city council shall be effective unless adopted by at least a majority of city council members present.

Every city council member present shall vote on all questions, except as provided by state law¹, a city council member must promptly disclose any pecuniary interest in a contract which the city council has the power to approve, and no city council member may vote upon any matter related to the approval of the contract in which the city council member has a pecuniary interest. (Emphasis added.)

As the mandatory language of the Charter indicates, voting on matters before the Council is one of the paramount duties of its members. Abstention is only rarely appropriate.²

The Council's rules provide further guidance:

10.10 Council Member Must Vote Unless Prohibited: Every member present when a question is put shall vote for or against it unless prohibited from voting by provision of state law, charter or because of a conflict of interest, which interest shall be disclosed. If there is a tie vote in such a case, the question shall be lost.

10.11 Financial Interest Of Council Member: No Council Member shall vote on any question in which the member has a financial interest, as defined by law, charter or ordinance.

The City's ethics ordinance, Detroit City Code 2-6-1 *et seq.*, addresses financial or pecuniary interest. Section 2-6-3 (emphasis added) defines "ownership interest" as follows:

Ownership interest means a **financial or pecuniary interest** that a public servant has in the affairs of 1) any business entity in which the public servant **or a member of his or her immediate family** is an officer, director, member, or **employee**; 2) any business entity in which the public servant or a member of his or her immediate family controls, or directly or indirectly owns, in excess of five (5) percent of the total stock or an interest totaling fifty thousand dollars (\$50,000.00) or more in value; or 3) any person or business entity with whom the public servant has a contract.

Section 2-6-32 of the ordinance, addressing disclosure, requires that,

... [A] public servant who exercises significant authority in the course of his or her duties over the solicitation, negotiation, approval, amendment, performance or renewal of a city contract **shall disclose any ownership**

¹ RAD's review of relevant sections of the Michigan Compiled Laws (see, for example, MCL 15.342 and MCL 15.304) does not have any direct impact on our analysis because the specific language of the Charter combined with that of the City's ethics ordinance, at the very least, raise the specter of the appearance of impropriety -- although relying solely on the Charter, our review would be limited to application of state law.

² In a representative democracy, an elected official's vote is the vote of the people, not that of the individual.

interest that he or she, or his or her immediate family, has concerning such city contract. (Emphasis added.)

Analysis

In the instant situation, the question presented is whether Council Member Cockrel should appropriately participate in the votes to authorize the agreement between the City, the DMC and Vanguard as well as to authorize designation of a Renaissance Zone, while his wife is employed in a middle management position with the DMC. Neither the Charter nor the Council rules define what constitutes a financial or pecuniary interest. It is, however, addressed by the ethics ordinance (section 2-6-3). Strictly construing the definition in the ordinance, there is no question but that Council Member Cockrel's immediate family member is an employee of the entity whose matter is before the Council. Thus, by the broad terms of the ordinance, an ownership interest exists.

Although the ethics ordinance contemplates **disclosure only** in this situation where the Council Member's immediate family member is merely an employee of a large corporation with no significant controlling authority, given the **mandatory** language of section 4-108 of the Charter that "no city council member may vote upon any matter related to the approval of the contract in which the city council member has a pecuniary interest", it is RAD's recommendation that Council Member Cockrel abstain from voting on this matter. However, the result is counter intuitive and borders on the absurd given the likely thousands of employees of DMC.³ RAD sought clarification from the Law Department and confirmed that this is not a result contemplated by the drafters of the ordinance. Law concurs that amendment of the ordinance is necessary.

³ The overreach of this definition could conceivably prohibit a council member from voting on a contract matter involving Ford or GM if a family member was employed as a line worker, a janitor, a receptionist or a student intern.